

SECRETARY OF LABOR,
Complainant,

v.

PARISI CONSTRUCTION, INC.,
Respondent.

OSHRC DOCKET
NO. 01-1286

APPEARANCES:

Susan J. Witz, Esq., Office of the Solicitor, U.S. Department of Labor,
Chicago, Illinois

Hap Pigsley, Safety Consultant, Platt Safety Services, Franklin, Wisconsin

Before: Administrative Law Judge Sidney J. Goldstein

DECISION AND ORDER

After a compliance officer with the Occupational Safety and Health Administration inspected a worksite of the Respondent, that agency issued the company a citation for the alleged violations of a number of safety regulations adopted under the Occupational Safety and Health Act of 1970. The Respondent disagreed with the citation and filed a notice of contest. After a complaint and answer were filed with this commission, a hearing was held in Milwaukee, Wisconsin.

The citation contained five items. Item 1 related to employees on road construction work without high visibility vests. The other four items, including sub-parts, concerned overexposure to silica dust, failure to implement engineering controls, failure to train employees regarding respirable

crystalline silica dust, failure to evaluate employee exposure to the silica dust, failure to train employees on the capabilities and limitations of the N 95 respirator, and the unavailability of a written respiratory protection program. The Secretary proposed a penalty of \$3,000.00 for item 1 and \$1,500.00 for each of the other four items.

At the hearing the compliance officer reviewed the various aspects of the citation, but there was no problem with respect to the violations of the regulations. Indeed, in its answer the Respondent wrote that “There is no question as to the findings of the compliance officer”

The record discloses that although Respondent’s employees did not wear high visibility vests for one hour, they were protected by barrels on one side of the work. The Respondent also understood that a subcontractor was responsible for traffic control. There were only two employees intermittently exposed to silica dust, and they also had some face protection. The Respondent also assumed that the four unions it worked with furnished safety instructions to its members. further, the Respondent contracted with a safety organization to devise a complete safety program with an anticipated expense of over \$50,000.00.

As previously noted, the Respondent agreed with the citation. In its amended answer, however, the company disputed the proposed penalties. As a result the sole issue in this proceeding is the appropriateness of the Secretary’s recommended penalties.

On this subject, Section 17(j) of the Act provides:

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employee being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

After a review of the record, I believe that the penalties proposed by the Secretary should be reduced to reflect the facts adduced at the hearing. Accordingly, the penalties are modified as follows:

Item 1	\$1,000.00
Item 2a & 2b	500.00
Item 3	500.00
Item 4a & 4b	500.00
Item 5a & 5b	500.00

In its brief, the Respondent writes “We are asking that OSHA help our employees by

allowing us to put the money for penalties toward a safe workplace for our employees, instead of putting it into the general funds of the United States Government.”

In this connection, Section 17(1) of the law provides:

(1) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the treasure of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

Without authority to waive this section of the Act, I am unable to grant the Respondent's request.

Summarized, (1) All items of the citation are affirmed; (2) The penalties are modified as heretofore shown; and (3) The Respondent's request with respect to payment of penalties is DENIED.

/s/

Sidney J. Goldstein
Judge, OSHRC

Dated: June 17, 2002